vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.274 OF 2002

Mohammad Anis Mohammed Shafi
r/at Koliwada, Vasai, Tal.Vasai
Dist.:Thane
(at present in custody lodged
in Central Jail) ... Appellant

V/s.

The State of Maharashtra
(at the instance of Sr.P.I.,
Vasai Police Station, Thane ... Respondent

Mr.K.S. Patil for Appellant
Dr.F.R. Shaikh, APP, for Respondent

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **OCTOBER 9, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The appellant is one of the three accused who were charged for having committed the murder of Bapu Bhau Pawar on 22.10.1994. While accused Nos.1 and 2 were acquitted, the appellant-accused No.3 has been convicted under section 302 and sentenced to suffer imprisonment for life.

2. The case of the prosecution is that Bapu Pawar retired from the Railways. He received a large amount as retiral benefits which he had invested in various securities. He was divorced from his first wife many years ago. She was staying separately with their children. Bapu Pawar then started living with Laxmibai,

accused No.1 and her son, accused No.2. The prosecution alleges that though Accused Nos.1 and 2 were insisting that the tenanted room in which they were residing should be transferred to the name of Laxmibai. They were also trying to persuade Bapu Pawar to invest his retiral benefits in their names. The prosecution alleges that since Bapu Pawar did not oblige him, he hired the services of Accused No.3 to kill Bapu Pawar. The victim was found dead at about 9.30am. Accused No.2 informed the victim's sister who was residing in the same chawl about his death. The victim's sister then lodged a complaint with the police on the basis of which accused Nos.1 and 2 were arrested on the same day. Accused No.3 was arrested the next day. According to the prosecution, at the instance of Accused No.3, they have recovered the knife used for the assault on the deceased. The blood stained clothes of Accused No.3 and the knife which was also blood stained were sent for chemical analysis. Besides this, the blood which was found at the scene of offence was also sent for analysis to the chemical analyser. The blood group of the deceased matched the blood group of the stains on both the clothes of the accused No.3 and the blood of the knife. All three accused were charged for having committed the murder of Bapu Pawar. They were tried in the Court of Additional Sessions Judge, Palghar. As stated earlier, Accused Nos.1 and 2 were acquitted while Accused No.3 was convicted. The present appeal is filed

by Accused No.3

3. The prosecution has examined 12 witnesses to support its case. PW10 is the Complainant. She is the sister of the deceased. She has stated that she was informed of her brother's death when accused No.2 went to her house to inform her. She rushed to the house of the deceased i.e., Room 3 in Furtado chawl and found him lying dead in a pool of blood. She has stated that she suspected that Accused No.2 had murdered her brother and informed the police accordingly. She has candidly stated that she had not seen the assault on her brother. PW1, PW4, PW5 and PW9 are the panch witnesses. The inquest panchanama and spot panchanama of the scene of offence have been proved by PW1. PW4 has proved the seizure of articles from the house. He has also proved exhibit 34 i.e., the spot panchanama of the room No.3 in Furtado chawl where the deceased was found lying in a pool of blood. PW5 has proved the discovery panchanama where the knife used for the assault was recovered at the instance of accused No.3. The clothes and other articles of the accused were also seized. He has proved the panchanamas at Exhibits 37 and 38. PW3 is the owner of a stall which was situated just outside the chawl in which the deceased was residing. She has stated that she saw accused No.2 return home between 10.30 am and 11 am. She has stated that a 25 year old man was at her stall at about 8.30 am or 9 am. He was wearing blue

trousers and a green shirt. She has identified that person as accused No.3, in the Court. PW11, the brother-in law of the deceased, also claims to have seen accused No.3 at the store run by PW3 when he left for work that morning. The test identification parade was held by PW6. He has stated that PW3 and PW9 have identified accused No.3 at that test identification parade.

4. PW7 is the son of the deceased. He was staying away from the deceased after the divorce between the deceased and his mother. This witness has stated that his father used to drink habitually. PW8 is the landlord of the chawl who has spoken about his conversation with the deceased a few days prior to the incident when the deceased had disclosed to him that accused No.1 had wanted him to transfer the room to her name. This witness has also stated that there were differences between accused No.1 and the complainant who was residing in room No.1 of the same chawl. PW2 is the Medical Officer who has performed the postmortem on the dead body of Bapu Pawar. The cause of death assigned is haemorrhagic shock and blood aspiration leading to asphyxia. The cause of death are the injuries on the neck and liver due to which there was cardio-respiratory failure. This witness has stated that the injuries could be caused by a sharp edged weapon. PW12 is the Investigating Officer. The recovery of the weapon and

clothes at the instance of Accused No.1 was made two days after the incident, according to this witness. He has stated in the cross-examination that the knife and clothes recovered at the instance of accused No.3 were sealed on the spot. He has admitted however that there is no mention of this fact in the Panchanama.

5. We have scrutinised the entire evidence on record with the assistance of the learned Advocate for the defence and the learned Assistant Public Prosecutor. While reappreciating the evidence on record, we have borne in mind the fact that accused Nos.1 and 2 have been acquitted of the crime. It is necessary for us to consider whether there is any motive for accused No.3 to have committed the crime and whether there is any evidence indicating that he was in fact responsible for the death of Bapu Pawar.

6. There is no evidence at all on record showing that accused No.3 had any motive to kill the deceased. Neither is there any evidence to show that he knew the deceased or accused Nos.1 and 2. There is also no evidence on record to indicate that there was any enmity between Accused No.3 and the deceased. The prosecution has thus failed to establish the motive which could be attributed to accused No.3 for having killed the deceased. We would therefore, have to consider the effect of the recovery of the knife and clothes of

Accused No.3 made at his instance. There is no doubt about the recovery of the clothes of the accused. However, the recovery panchanama indicates that both the knife and the clothes were washed and had only traces of blood stains on them. The Chemical Analyser's report indicates that the knife and the clothes of the accused had blood stains belonging to 'A' group on them. The blood of the deceased has also been analysed and it was found that it was of the same group i.e., 'A' group. However, one of the items sent for chemical analysis was a reddish liquid in a bottle. This has been analysed as human blood of 'A' group. The evidence before us indicates that the knife and the clothes of the accused which were seized were not sealed. The Investigating Officer, PW12 has admitted this to be so. The Panchanama at Exhibit 38 indicates that the blood stains on the knife and the clothes of the accused were washed and there were only the traces of blood on these articles. therefore, it is difficult to believe that it was possible for the chemical analyser to decipher that there were human blood stains on the knife and the clothes of the accused and that they belonged to 'A' group. Undoubtedly, these articles were not sealed. In our view, therefore, the possibility of these articles being tampered with cannot be ruled out. The bottle containing a reddish liquid taken from the scene of offence which was sent to the chemical analyser contained human blood belonging to 'A' group. The

possibility of the articles i.e., knife and the clothes of the accused having been stained with blood from this bottle cannot be ruled out. The fact that the blood stains on these articles were so clear and sufficient for analysis, although these articles were washed according to the panchanama, shows that the articles may have been tampered since they were not sealed. Therefore, the recovery made at the instance of the accused No.3 does not in any manner indicate that it was he who was responsible for the crime.

7. Had the investigating authorities been more vigilant and sealed the articles the story might have been different. The investigating authorities have also not bothered to have the finger prints on the knife analysed. If that had been done, it may have been possible to prove that the accused No.3 had used the knife. Therefore, the recovery of these articles is of no use to the prosecution.

8. The mere fact that PW3 and PW11 had seen accused No.3 near the stall run by PW3 around the time when the deceased was assaulted would not necessarily mean that it was he who assaulted the deceased. As we have already said, he had no motive to commit the crime. There is no evidence on record to indicate that he knew the deceased. The theory of the prosecution that he was paid to kill the deceased has not been accepted by the

trial Court and, therefore, accused Nos.1 and 2 have been acquitted. In our opinion, after Accused Nos.1 and 2 have been acquitted, although it could have been said that they had a motive to commit crime, Accused No.3 cannot be held responsible for the death of Bapu Pawar.

9. The defence witness who was examined has denied that accused Nos.1 and 2 had hired the services of accused No.3 to kill Bapu Pawar. In such circumstances, the Appeal is allowed. The conviction and sentence imposed by the learned Sessions Judge is set aside. The Appellant-accused No.3 be released forthwith, if not otherwise required in law.